

LIN v. PUBLIC PROSECUTOR

[O.Cr. J. (Punch Coomaraswamy J.) October 1, 1986]

[Singapore — Criminal Motion No. 30 of 1986]

*Criminal Law and Procedure — Transfer of case — Applicant charged in a District Court — Application to transfer case for trial in the High Court — Criminal Procedure Code (Cap. 113, 1980 Reprint), s.184(1)(n) & (e)(i) & (ii).**

The applicant was awaiting trial on charges of cheating before a District Judge. He applied for transfer of his trial to the High Court on two grounds. He claimed that the charges arose out of "letters of hypothecation" involving a company of which he was director and given to banks and that the law on this topic and on banking and securities raised questions of law of unusual difficulty under section 184(1)(b) of the Criminal Procedure Code. The company in question was the subject of winding-up proceedings in which the High Court had ordered the trial of certain issues arising out of the "hypothecation" transactions between the company and several banks. He claimed that any pronouncements by the High Court in the winding-up proceedings (in which he had no right to be heard) may influence the District Court trying him. To avoid this, a transfer of his trial to the High Court, he argued, was expedient for the ends of justice under section 184(1)(e) of the Code.

Held: (1) as District Judges today are all professionally qualified and as it was the duty of the prosecution and defence counsel to present the relevant law comprehensively to the trial Court, the reasons for section 184(1)(b) had diminished considerably from the day when presiding officers in subordinate courts were not professionally qualified. Novelty in a topic of law did not necessarily mean difficulty. The applicant's case did not therefore justify a transfer to the High Court under section 184(1)(b);

(2) given the changed situation in the qualifications of the subordinate judiciary section 184(1)(b) may well have today, in Singapore, fallen into desuetude and obsolescence;

(3) the likelihood of the subordinate judiciary being influenced by pronouncements of the High Court does not make it expedient for the ends of justice for a trial to be transferred to the High Court under section 184(1)(e).

Cases referred to:

- (1) *Magan Lal v. Ganesh Prasad* A.I.R. 1918 All. 372.
- (2) *Pandurang Krishnaji Deotale v. Emperor* A.I.R. 1928 Nag. 21, 23.
- (3) *Re Shriniwas Krishna Srivalkar* [1905] 2 Cr. L.J.R. 582; 7 Bom. L.R. 637.
- (4) *Botting v. Emperor* A.I.R. 1934 Oudh. 349.
- (5) *Attorney-General v. Koh Cho Puan & Ors.* (1966) [1986] 2 M.L.J. 339.
- (6) *Measor v. Public Prosecutor* [1972] 1 M.L.J. 195.
- (7) *Wong Hong Toy & Anor. v. Public Prosecutor* [1986] 2 M.L.J. 336.

A CRIMINAL MOTION.

M.P.H. Rubin for applicant.*Eleanor Wong Siew Yin* (Deputy Public Prosecutor) for respondent.*Cur. Adv. Vult.*

P. Coomaraswamy J.: The applicant, Lin Tah Hwa, is on charges of cheating before a District Court. The charges are under section 417 read with section 34 of the Penal Code.

Mr. Rubin, counsel for Lin, makes application under section 184(1), of the Criminal Procedure Code (CPC), 1980 Reprint, for the case to be transferred and tried in the High Court. He relies upon two paragraphs of that subsection. That subsection, so far as it is material for present purposes, reads:

"184(1) Whenever it is made to appear to the High Court that —

(b) some question of law of unusual difficulty is likely to arise; or

(e) such an order is expedient for the ends of justice ..., it may order that —

(ii) any particular criminal case shall be transferred to and tried before the High Court."

In an application of this nature with the substantive proceedings yet to come, it will be wrong for me to state facts beyond those absolutely necessary for the purposes of my decision. I therefore confine myself to such facts. The applicant is the founder director of Lin Securities (Private), a company incorporated under the Companies Act and now subject to winding-up proceedings in Companies Winding-up No. 183 of 1986.

Orders have been made in the winding-up proceedings for the determination of various issues arising out of certain documents described as "letters of hypothecation." These were executed by the company in favour of several banks and relate to shares listed in documents called "Daily Certificates." These same letters or some of them are also relevant in the criminal proceedings against the applicant.

* In Malaysia see F.M.S. Cap. 6, s.417(1)(b) & (e)(bb) & (cc).

I will deal first with Mr. Rubin's contentions under section 184(1)(e), *i.e.*, that a transfer to the High Court "is expedient for the ends of justice." He argues that there is a likelihood of "grave danger and prejudice" as the District Court hearing his case will be influenced by any pronouncements of the High Court in the winding-up proceedings where the applicant is neither a party nor a person with a right to a hearing.

He further argues that the supreme needs of justice require that "the inconsistencies and multiplicities of findings" which are likely in view of the numerous applications involving differently-worded letters of hypothecation to different banks in the winding-up proceedings should be avoided and that this can only be avoided by a transfer to the High Court.

To my mind, if the dangers to which Mr. Rubin refers are a real possibility, there is an equal likelihood of one High Court judge being influenced by the decision of another High Court judge. The fears that Mr. Rubin has, even if justified, will not be removed by a transfer of this case to the High Court.

In my view, therefore, the likelihood of similar issues arising out of identical or similar transactions or even the very same transactions in two different courts, one dealing with a civil matter and the other with a criminal one, do not bring the case within the provisions of section 184(1)(e).

I now turn to section 184(1)(b). The elements in the charge of cheating are set out in the Penal Code, section 415. They are elements that have frequently been dealt with by the Subordinate Courts.

Under paragraph (b), the only issue on which the application was urged before me is that the case involves the law on letters of hypothecation and the law of banking and securities. The points of law involved in "hypothecation" transactions were described as novel; in fact, they may well be. Novelty in a point of law however does not by itself make that point "a question of law of unusual difficulty." If the material law governing the transaction, on banking and on securities, is relevant to the cheating charges, it is the task of the prosecution and of defence counsel to place fully and comprehensively with appropriate citation from authorities, the law before the court hearing the case. In my view, therefore, the ground under paragraph (b) fails.

A In this context, it is pertinent to look at the history of section 184. Until 1900 there was no comprehensive code for criminal procedure in force in Singapore and the other territories, then comprising the Straits Settlements. The law relating to criminal procedure was to be found in at least six ordinances enacted between 1870 and 1892. The 1892 enactment was a comprehensive code but it was never brought into force.

B In 1900, the Straits Settlements had its first comprehensive Criminal Procedure Code. It drew heavily on the Indian Criminal Procedure Code of 1898. Our present section 184 is, with some immaterial changes, section 410 of the 1900 Code. That in turn came from section 441 of the Indian 1898 Code. In the present Indian Code, it is section 404. For the purposes of the application before me, there are no material differences.

C At the turn of the century and for many years before and even after, Singapore and the predecessor Straits Settlements as well as India had persons not professionally qualified sitting in the subordinate courts.

D In the Straits Settlements, many of these non-professional judicial officers were also administrative officers. Some of them had passed Government examinations in law but these examinations were largely confined to the law encountered by people like Assistant District Officers in the course of their administrative, land office, law and order and "police magistrate" work.

E The position in India, while not dissimilar in this respect, went even further. Well into the thirties and even later, many parts of India had unofficial or honorary lay magistrates, some of whom had no knowledge of English. An examination of the Indian cases under paragraph (b) shows that where application was successfully made, it was almost in every case an application for transfer of a case from the court of a lay (or of one stipendiary) magistrate to that of a (or of another) stipendiary magistrate or to a more superior court, but one still subordinate to the High Court.

F In *Magan Lal v. Ganesh Prasad*,⁽¹⁾ the case was originally fixed for hearing before a lay Honorary Magistrate who did not know the English language. The applicant complained that, amongst other things, he had to file translations of judgments from the English language into Urdu. The charge was under section 211 of the Indian Penal

Code, the offence having the same section number under our Code.

Mr. Justice Knox in allowing the application said, at page 373, that the case "ought to be tried either by a Court of Session or at any rate by a Magistrate of considerable experience, and it is not a case of the kind that should have been sent for trial to an Honorary Magistrate who does not appear to have had much experience in the trial of criminal cases."

In *Pandurang Krishnaji Deotale v. Emperor*⁽²⁾ Finlay J.C. said:

"While I value the services of Honorary Magistrates highly, there can be no gainsaying the fact that cases, which are likely to be keenly contested and intricate in nature, are, on the whole, likely to be more efficiently disposed of by stipendiary Magistrates than by Honorary Magistrates, or at least the accused persons concerned well believe this to be the case."

In each of these two cases, there were other grounds under other paragraphs of section 441(1) [now, 404(1)] which the respective judges took into account before allowing the applications. What is important to note is that each transfer was a transfer from the court of an Honorary Magistrate, not legally qualified, to that of the District Magistrate or a First Class Magistrate and not to the High Court.

Mr. Rubin cited two Indian cases, *Re Shrinivas Krishna Srivalkar*⁽³⁾ and *Botting v. Emperor*⁽⁴⁾. They again were not cases of transfer from a subordinate court to the High Court. In both, the transfer was from a magistrate's court to a court of session. This is a court superior to that of a magistrate but subordinate to the High Court. In the first, the transfer was because questions of law of unusual difficulty might rise.

In the *Botting* case, proceedings before a magistrate had begun and the High Court said there was little doubt in its mind that "the attitude taken up by the learned Magistrate was not conducive to justice to the accused." A further distinguishing feature was that the case was likely "to embrace within it charges for offences exclusively triable by a court of session."

In each of these four Indian cases, the High Court was acting under the Indian provision which is identical to that part of section 184(1) which gives the High Court a discretion to order the

A transfer of a case "from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction."

B I now turn to the Singapore decisions. In the case of *Attorney-General v. Koh Cho Puan & Ors.*⁽⁵⁾, the accused/respondents were due to go for trial in the Subordinate Courts on charges of cheating, attempted cheating and conspiracy to cheat. The amount involved was \$1 million. There were to be a score of witnesses or more and the documents were voluminous.

C In this case, it was the Attorney-General who applied under paragraphs (b) and (e) of the then section 176(1) [now, 184(1)], CPC, for transfer of the case to the High Court. The justification advanced on his behalf under paragraph (b) was that the law involved was complex as it related to banking and shipping. I have set out the points advanced for the Attorney-General under paragraph (e) at the end of the immediately preceding paragraph.

E Mr. Justice Winslow refused the application and on paragraph (b) observed that the case did not "render it beyond the competence of the Courts already entrusted by the legislature with the task of hearing trials of accused persons charged with cheating and allied offences."

F Mr. Justice Choor Singh in *Measor v. Public Prosecutor*⁽⁶⁾ used the historical change in the professional qualification of the presiding officers of the subordinate courts as a ground for dismissing an application under paragraph (b). He also added that with an accused's right of appeal to the High Court and the High Court's own powers of revision, the High Court should "be loathe to transfer a case from a subordinate court on the ground that difficult questions of law are likely to arise."

H The question has earlier this year come before the Court of Criminal Appeal in *Wong Hong Toy & Anor. v. Public Prosecutor*⁽⁷⁾. The appellants' application for transfer of their cases from the District Court to the High Court was rejected by the High Court. They appealed.

I Dismissing the appeal, the Court said, with reference to section 184(1) (b):

"After the Criminal Procedure Code was first enacted many judicial officers holding office in the subordinate courts were persons without legal qualifications, though they were

persons of standing in the public services. In Singapore, however, for more than 25 years every judicial officer holding office in the subordinate courts has been a 'qualified person' under the Legal Profession Act.

Therefore, paragraph (b) has lost much of its practical importance. Judicial officers of courts subordinate to the High Court have gained vast experience in respect of cases similar to, if not more complicated than, those with which the [applicants] had been concerned. District Judges are qualified persons of several years' standing....."

In the light of the decisions I have referred to, for the provisions of section 184(1) (b) to be successfully invoked today the case must be an extraordinarily rare one and I find it extremely difficult to think of one. For the historical reasons I have stated, and, given the qualifications and experience of district judges and the more senior magistrates, I am of the firm view that for all practical purposes and intent, paragraph (b) of section 184(1) has fallen into desuetude and obsolescence for transfer of cases to the High Court. Having regard to Singapore's size and comparing Singapore to the geographically separate and dispersed territories that once constituted the Straits Settlements, the same may well be true for all cases, whether for transfer to the High Court or from one subordinate court to another, of paragraphs (c) and (d) of section 184(1).

Application dismissed.

Solicitors: *Amarjit Rubin & Partners.*

A MALAYSIAN REPORTS

RASHID BIN MOHAMED v. THE CHARTERED BANK

[S.C. (Salleh Abas L.P., Syed Agil Barakbah & Wan Hamzah S.C. JJ.) May 15, 1986]

B [Kuala Lumpur – Supreme Court Civil Appeal No. 1 of 1986]

Debtor and Creditor – Debt – Assignment – Notice – Civil Law Act, 1956, s. 4(3).

C *Banking – Debtor and creditor – Assignment of debt to bank – Demand for payment.*

This was an appeal from the decision of Gunn Chit Tuan J. in [1986] 2 M.L.J. 219, *sub nomine*, *Chartered Bank v. Rashid bin Mohamed*. The Supreme Court allowed the appeal and ordered the civil suit be remitted back to the High Court. There was no written judgment. We reproduce below the Order of the Supreme Court.

D

SUPREME COURT.

E *James Leslie Ponniah* for the appellant.
T. Thomas for the respondent.

ORDER

F *THIS APPEAL* coming up this 15th day of May 1986 for hearing in the presence of Mr Thomas Thomas of Counsel for the Respondent and Mr James Ponniah of Counsel for the Appellant *AND UPON READING* the Record of Appeal *AND UPON HEARING* Counsel as aforesaid *IT IS ORDERED* that this Appeal be and is hereby allowed with costs, *AND IT IS FURTHER ORDERED* that the Civil Suit be remitted back to High Court for trial.

G *GIVEN* under my hand and the Seal of the Court this 15th day of May 1986.

Sd.
The Senior Assistant Registrar,
Supreme Court Malaysia,
KUALA LUMPUR.

H

Solicitors: *Stanley Ponniah, Ng & Soo; Skrine & Co.*

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